United Nations S/2000/1198

Security Council

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Letter dated 14 December 2000 from the Secretary-General addressed to the President of the Security Council

I am attaching for your consideration, and for the consideration of the members of the Security Council, a letter dated 9 November 2000 from the President of the International Criminal Tribunal for Rwanda, Judge Navanethem Pillay (see annex).

In her letter, President Pillay states that the judges of the International Criminal Tribunal for Rwanda support the principle that the victims of the crimes over which the Tribunal has jurisdiction should be compensated for the losses or injuries that they have sustained.

President Pillay states that the judges have considered the possibility that the statute of the Tribunal might be amended in order to confer upon it a power, similar to that to be enjoyed by the future International Criminal Court under its statute, to order the payment of compensation to the victims of the crimes committed by the persons whom it may convict.

President Pillay states that the judges have, however, come to the conclusion that it is not desirable that the Tribunal be possessed of such a power, in particular, for the reason that it would impose a significant additional responsibility upon the Tribunal and would severely hamper it in the discharge of its core mandate of prosecuting those responsible for the crimes over which it has jurisdiction.

In her letter, President Pillay states that the judges are of the view that there are other, quicker and simpler mechanisms which might more appropriately be considered for ensuring the payment of compensation to the victims of crimes within the Tribunal's jurisdiction.

At the same time, President Pillay states that the judges are of the view that the Tribunal might, in tandem with one of those mechanisms, appropriately be vested with a limited power to order the payment of compensation from a trust fund to victims who appear as witnesses in trials before it. Adoption of this measure would require the amendment by the Security Council of the Tribunal's statute.

I would recall in this connection that, in my letter dated 2 November 2000 (S/2000/1063), I drew to the attention of the President and of the members of the Security Council a letter dated 12 October 2000 from the President of the International Tribunal for the Former Yugoslavia, Judge Claude Jorda, setting out the views of the judges of that Tribunal on this same matter.

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I would be grateful if you would bring the present letter and its attachment to the attention of the members of the Security Council.

(*Signed*) Kofi A. **Annan**

Annex

Letter dated 9 November 2000 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

On behalf of the judges of the International Criminal Tribunal for Rwanda (the "Tribunal"), I have the honour of writing to you about the important issue of compensation for victims of the atrocities that took place in Rwanda in 1994, over which the Tribunal has jurisdiction.

At a plenary meeting of the nine trial judges and five appeals judges, the issue of compensation for the victims of the tragic events in Rwanda was discussed at length. The judges wholeheartedly empathize with the principle of compensation for victims, but, for the reasons set out below, believe that the responsibility for processing and assessing claims for such compensation should not rest with the Tribunal.

1. The principle that the victims of crime should be compensated for their loss or injury is laudable and strong support should be given to it.

2. The United Nations has taken various steps to meet the needs of victims of crime. One of the most important is the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly in 1985.[1] This Declaration reminds the world that crime victims should be treated with compassion and respect and states that they are entitled to receive justice, be treated fairly and obtain redress in the form of restitution, compensation and other assistance for the injuries that they have suffered.

3. It is also noted that the Rome Statute of the International Criminal Court[2] contains, in article 75, the following provision:

"*Reparations to victims*

"The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting." (para. 1)

4. For the reasons set out below, it is submitted respectfully that any such proposal would not be efficacious, would severely hamper the everyday work of the Tribunal and would be highly destructive to the principal mandate of the Tribunal.

5. Further, it is respectfully submitted that there are other, quicker and simpler methods which will ensure that the victims of criminal acts in Rwanda receive just compensation.

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[1] General Assembly resolution 40/34, annex.

[2] A/CONF.183/9.

Who are the victims that qualify for compensation?

6. Using the definitions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, referred to above, paragraph 1 defines victims as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power."

7. Paragraph 2 of the Declaration states:

> "A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."

8. Paragraph 12 of the Declaration states:

> "When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
>
> (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
>
> (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization."

9. Applying the breadth of that definition to Rwanda, while it is impossible to establish any exact figure of the number of persons eligible for compensation, it must comprise a substantial part of the population of Rwanda, both within and outside of the present borders of the country.

The work of the Tribunal

10. The calendar of the Tribunal is full for the foreseeable future. All three Trial Chambers are fully committed and will remain so for the life of the Tribunal. There remain in custody a large number of defendants who have yet to be tried. The mandate of the Tribunal is also a limited one.

11. It is salutary to remember that the Expert Group to conduct a review of the effective operation and functioning of the International Tribunals for the former Yugoslavia and for Rwanda observed of the latter in its report that "predicting future developments is uncertain at best ... Bearing in mind the current and foreseeably more rapid pace of judicial proceedings, a period of some seven or eight years appears to be a minimum for discharge of the Tribunal's mandate." (S/2000/597, annex I, para. 34)

12. The work of the Tribunal has been considerably complicated by the uniqueness of its mandate, the ground-breaking nature of its considerations, the necessity of developing new models of criminal procedure and the development of new organizational structures. If the Tribunal adds to its responsibilities a whole new area of law relating to compensation, then the Tribunal will not only have to

develop a new jurisprudence; it will also have to expand its staffing considerably and establish new rules and procedures for assessing claims.

Compensation schemes

13. Research on compensation schemes presently in operation suggests that very few of the eligible victims receive the compensation to which they are entitled. Often, only victims represented by counsel achieve a satisfactory level of compensation. There are substantial overhead costs in collecting and processing documentation and the administration costs are usually very high. Victim satisfaction with compensation programmes appears to be quite low. Victims usually express considerable frustration with the complexity of compensation documentation procedures.[3]

14. It seems likely that if the Tribunal embarks upon the processing of claims for compensation, then, in addition to any dissatisfaction with its present progress, it can expect to add to this the frustration and disappointment of those attempting to establish claims.

Other options

15. There are other options which can be considered:

(a) A specialized agency set up by the United Nations to administer a compensation scheme or trust fund that can be based upon individual application, or community need or some group-based qualification;

(b) A scheme administered by some other agency or governmental entity on similar lines to (a);

(c) An arrangement which could operate in tandem with options (a) and (b) and which would allow the Tribunal to exercise a limited power to order payments from a trust fund for victims actually appearing before it as witnesses in a case. It is noteworthy that such a power exists in the criminal courts of the United Kingdom of Great Britain and Northern Ireland, but is especially limited to compensation issues where the issue is factually clear and where there is no dispute as to quantum before the court. In that jurisdiction, extensive inquiry into compensation issues by criminal courts is expressly abjured.

In the light of the foregoing, any one of the options enumerated in (a), (b) and (c) above may be considered to process and assess claims for compensation from people who are victims of crimes that fall within the jurisdiction of the Tribunal.

(*Signed*) Navanethem **Pillay**
President

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[3] Elias, R., *The Politics of Victimization: Victims, Victimology and Human Rights* (New York and Oxford: Oxford University Press, 1986), especially pages 162, 212 and 238.